S.B. CIVIL MISC. APPEAL NO.922/2006
(Pepa Ram @ Prem Vs. Anand Singh & ors.)

Date of Order :: 11.09.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Awar Dan Charan for the appellant

Heard learned counsel for the appellant and perused the record of the Tribunal.

For quantification of compensation on account of injuries and resultant loss suffered by the injured appellant, the Tribunal has allowed Rs. 10,029/- towards the bills of treatment expenditure (leaving aside two useless plain paper slips Ex. 38 and Ex. 39 for Rs. 938/- and Rs. 263/- respectively); Rs. 4,800/- towards loss of income for two months after taking monthly earning of the claimant at Rs. 2,400/- for want for any other cogent income proof and after considering about one month's hospitalisation; and Rs. 47,329.92 towards loss of future earning capacity in view of his disability certificate Ex. 48 stating 9.13% permanent partial disablement with reference to 'partial ankylosis of left ankle 90-105º planter flexion' by application of a multiplier of 18.

The Tribunal, if at all, has erred in favour of the appellant and not against him. So far the award of Rs.

47,329.92 towards loss of future earning capacity is concerned, the same is totally unwarranted in the fact situation of the present case. The appellant sustained grievous injuries of fracture of mid shaft of left tibia and fracture of medial malleolus of left tibia. He had alleged being engaged in the work of packing of ‘Gutkha”. There is no evidence on record that due to the disability suffered, his earning capacity has been retarded. He has adequately deposed before the Tribunal standing on feet without any support. The award made by the Tribunal towards loss of earning capacity is, therefore, disapproved. Only a component of loss of amenities of life could have been considered in view of partial ankylosis of left ankle as stated in the disability certificate Ex. 48; and compensation in the sum of Rs. 25,000/- seems appropriate on that count. The Tribunal has of course not awarded anything towards pain and sufferings, towards attendants and towards dietary expenditure; however, even if an amount of Rs. 15,000/- is allowed on these counts, the ultimate award made by the Tribunal would stand on much higher side. The Tribunal has not restricted even on the rate of interest and has allowed interest at the rate of 7.5% per annum from the date of filing of the claim application.

In the ultimate analysis, the award made by the Tribunal in the sum of Rs. 62,158.92 with interest at the rate of 7.5%

per annum from the date of filing of claim application remains higher than that of just compensation ruling out any scope for enhancement.

The appeal fails and is dismissed summarily.

(DINESH MAHESHWARI),J.

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